

SAUNDERS AND PORTER, SURETIES OF WILLIAM ESTIS.

[To accompany bill H. R. No. 84.]

MARCH 5, 1840.

Mr. CRARY, from the Committee on the Judiciary, made the following

REPORT:

*The Committee on the Judiciary, to whom was referred the petition of William Saunders and William R. Porter, sureties of William Estis, report:*

That the petitioners, together with others, became the sureties of William Estis (in the month of August, 1814), as paymaster of the 4th Virginia regiment, then stationed at Norfolk: that, during the war, the Government was frequently without the means of paying off the troops; and that Estis executed his own notes, and made advancements to the regiment, over and above what had been placed in his hands, to the amount of \$8,790 94; and when he made application for funds, to cover this excess, he exhibited an estimate, also, showing a balance due the regiment, besides this, of \$6,141 94: that the Government was still unable to pay it, when it could have been distributed by him in 1815. In anticipation of its payment, however, he executed a receipt, while in the city of Washington, for the \$6,141 94; which sum was never, in fact, placed in his hands till the 20th March, 1816, when he received the sum of \$14,900, to cover the aforesaid sum of \$8,790 94 advanced by him, and the said lastmentioned sum of \$6,141 94; leaving still a balance in his favor of \$32 88—supposing the last sum to be afterward accounted for. At this time (March, 1816), the 4th Virginia regiment had been disbanded, the war having closed long previous thereto, and the troops were dispersed over almost every part of the State. It appears, however, that the said Estis, at the request of the Paymaster General, commenced making payments to the men; used great diligence in ascertaining their residences; that he published notices of his readiness to pay them in different sections of the State; and that many of them did come forward and receive their pay, in some instances entire companies, is abundantly proven by the testimony; that, about the year 1818, Estis, however, became, or was, totally insolvent, his papers lost or destroyed, and he omitted to make returns of the payments made by him to the proper accounting officers. In 1824, judgment was obtained by the United States against the said sureties for an alleged balance against Estis. The sureties, it seems, resided at a considerable distance from the place where the court was holden, as well as from the seat of the General Government, where alone the accounts could be investigated; and, relying upon Estis's known integrity of character, gave no attention to the case. That, after the rendition of the said judgment, they petitioned Congress for relief, on the ground that,

from the evidence adduced, full payment by Estis to the troops was to be presumed; and an act was passed on the 28th May, 1830, by which they were exonerated from the said judgment, except as to the sum of \$954 83, that sum only, in fact, appearing against their principal, Estis, instead of the sum of \$5,030 71, as at first claimed; and this, it is probable, might have been accounted for fully, also, but for the reasons assigned.

Since the passage of the said act, the sureties have renewed their petition, upon the ground that they had also a legal as well as equitable defence against the bond on which judgment was rendered as aforesaid, and of which they would have availed themselves during the pending of the suit, or have stated in their former petition, had not their ignorance of it prevented, and of which they have been since informed by those competent to advise. That there was an implicit condition to the said bond (executed in August, 1814), that the Government would, within a reasonable time, place the money necessary to pay off the regiment in the hands of the said Estis, but that he did not receive it *till the 20th of March, 1816, when the regiment had been disbanded*, the war closed, and the men were dispersed throughout a vast extent of country; and that if the said Estis then undertook to act as paymaster or distributor of money among those who had once composed a part of the 4th Virginia regiment, it must have been a voluntary act on his part; if not, that it was in virtue of some new contract made by the Government with him, to which the said sureties, not being parties, were in nowise bound by the same, and cannot in any degree be chargeable with his acts.

The committee are of opinion, under all the circumstances, upon the several grounds taken, that the sureties ought to be relieved against the entire judgment; in which opinion they find that they are sustained by the reports of two previous committees, as well as by the judgment of the House, a bill having been heretofore passed for the same object; and a bill is now reported accordingly.